

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE  
LICENSE OF

RICHARD H. KIRSCH, R.Ph.,  
RESPONDENT.

:  
:  
:  
: FINAL DECISION AND ORDER  
: ADOPTING STIPULATION  
: 90 PHM 34

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Richard H. Kirsch, R.Ph.  
1809 60th Street  
Kenosha, WI 53140

Pharmacy Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as a final decision in this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

## FINDINGS OF FACT

1. Richard H. Kirsch, R.Ph., Respondent herein, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin.
2. Richard H. Kirsch holds pharmacist license number 10358, first granted June 1, 1983.
3. That the Respondent's date of birth is May 13, 1953 and current address is 1809 60th Street, Kenosha, WI 53140.
4. Respondent admits that he has obtained possession of and self administered Schedule III and V controlled substances as defined under Chapter 161, Wis. Stats., without a valid prescription order of a practitioner, not for a valid medical purpose, and without any other proper permit, registration, or authority granted by the Controlled Substances Board, the Drug Enforcement Administration or under any applicable law.
5. Respondent admits that he is dependent upon alcohol and controlled substances.

4-17-90 10:00 AM

6. Respondent represents that on or around May 11, 1990, Respondent entered inpatient treatment for chemical dependency, and was discharged on or about June 6, 1990. Respondent was discharged from inpatient treatment to an outpatient AODA therapy and rehabilitation program including biweekly meetings with an addictionologist, several AA/NA meetings per week, and drug screens three times per week. A report on Respondent's current rehabilitation status from Respondent's rehabilitation supervising physician/therapist is attached hereto as Exhibit A.

7. Respondent has been employed as a pharmacist at a clinic pharmacy. Respondent's current managing pharmacist is knowledgeable of Respondent's chemical dependency as of May, 1990, and is supportive of Respondent's rehabilitation efforts. A report on Respondent's current employment status is attached hereto as Exhibit B.

8. Respondent, in consideration of this investigation and pursuant to the attached Stipulation, agrees to cooperate and abide by all requirements of the Pharmacy Examining Board concerning his chemical dependency. Respondent has agreed to continue in a chemical dependency rehabilitation program at a certified AODA facility, which shall be subject to approval by the Board, and abide by treatment and monitoring recommendations subject to the requirements of the Board, and agrees to practice limitations and monitoring as required by the Board.

#### CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to Wis. Stats. sec. 450.10(1), and Wis. Adm. Code Ch. Phar 10.

2. The Wisconsin Pharmacy Examining Board is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. Respondent's having been in possession of and used Schedule III controlled substances without a valid prescription order of a practitioner in violation of sec. 161.41(3) and sec. 450.11(7)(h), Wis. Stats., and Schedule V controlled substances in violation of sec. 161.23(1), Wis. Stats., are violations substantially related to the practice of pharmacy, and constitute unprofessional conduct under sec. 450.10(1)(a)2. and sec. Phar 10.03(1) and (3), Wis. Adm. Code, and subjects respondent to discipline under sec. 450.10(1)(b), Wis. Stats.

4. Respondent practiced or attempted to practice pharmacy while his/her ability to competently perform the duties of a pharmacist were impaired by drug or alcohol abuse in violation of Wis. Adm. Code sec. 10.03(7) and Wis. Stats. sec. 450.10(1)(a)3. and is therefore subject to discipline under Wis. Stats. sec. 450.10(1)(b).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the Stipulation of the parties, attached hereto, is accepted.

IT IS FURTHER ORDERED that effective on the date of this Order, the pharmacist license of Richard H. Kirsch, Respondent, shall be **SUSPENDED** for a

period of not less than five (5) years. The Board in its discretion may restore Respondent's license to full, unlimited status only upon petition by Respondent after completion of the aforesaid suspension period, and a showing by Respondent that he has complied with all terms and conditions of this Order, and a demonstration by Respondent that he may practice pharmacy without condition or limitation.

1. The suspension shall be stayed for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. The Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the Respondent for rehabilitation and practice during the prior three (3) month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that Respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the Respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. The applications for extension under 1.a. and all required reports under 2.a-c. shall be due on the following dates:

February 1, 1991 and each and every May 1, August 1, November 1, and February 1 thereafter that this Order is in effect.

2. CONDITIONS OF STAY AND LIMITATIONS.

a. Respondent shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the Respondent within 3 days of such prescribing.

b. Rehabilitation Program. Respondent shall remain in a rehabilitation program acceptable to the Board for the treatment of chemical abuse and dependency. Such a program shall consist of the following elements and requirements:

(1) Respondent shall continue in a chemical abuse and/or dependency treatment program under the care of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Pharmacy Examining Board approval of the drug and alcohol abuse/dependency treatment facility and the supervising

physician or therapist. The supervising physician or therapist shall be responsible for the Respondent's total assessment and rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. If deemed appropriate by the Board Advisor to this case, the supervising physician or therapist shall be provided with copies of the Division of Enforcement's investigative materials regarding this matter for review in connection with rehabilitation and counselling. A full written report of the evaluation and assessment shall be provided directly to the Board by the supervising physician or therapist within 30 days of the date of this order. The chemical dependency assessment report shall include:

- (a) An evaluation of Respondent's level of cooperation in the assessment and influence thereof on the assessment's conclusions,
- (b) Diagnosis of Respondent's condition,
- (c) Recommendations for treatment,
- (d) Work restrictions if any, and
- (e) Prognosis for Respondent's success in rehabilitation.

The results of the evaluation and assessment shall be considered in establishing the elements and goals of Respondent's rehabilitation and treatment program, subject to the requirements of this order. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order.

(2) The rehabilitation program shall include and Respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under sec. 227.01(3) or 227.42, Wis. Stats., or

Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

(3) Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of urine and/or blood specimens for monitoring for the presence of all controlled substances and alcohol in his blood and/or urine on a frequency of not less than:

- (a) Eight times per month for the first year following the date of this order.
- (b) Six times per month for the second year following the date of this order.
- (c) Four times per month for the third through fifth years following the date of this order.

All urine screens shall include testing and reporting of the specific gravity of the urine specimen.

The random drug and alcohol screening program shall include weekends and holidays for collection of specimens. Failure of the drug and alcohol screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspension, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

The Respondent shall appear and provide a specimen not later than 5 hours following a request for a specimen.

If the physician or therapist supervising the Respondent's plan of care, Respondent's employer, the Pharmacy Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional blood or urine screens are warranted, Respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall exceed the above stated minimum frequency for obtaining drug and alcohol screens as necessary to prevent ability of Respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met.

The Respondent shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board. Respondent shall immediately provide a copy of this Order to the

monitoring facility conducting the collection of specimen and/or chemical analyses upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility shall agree to provide random and witnessed gatherings of specimens for analysis for all controlled substances and alcohol. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry(hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility shall agree to immediately file a written report directly with the Pharmacy Examining Board, the supervising physician or therapist, and the Respondent's supervising pharmacist upon any of the following occurrences: if the Respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the specific gravity of a urine specimen is below 1.008; or if the Respondent refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.c. above.

The monitoring facility shall further agree to keep a formal record of the chain of custody of all specimens collected and subjected to analysis. The facility shall further agree to preserve any specimens which yielded positive results for any controlled substance or alcohol, or specific gravity below 1.008, pending further written direction from the Board.

(5) Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

- (a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,
- (b) Respondent's attendance in NA/AA meetings, and
- (c) Respondent's participation in and results of his random witnessed urine and/or blood screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.c. of this Order.

(6) Respondent shall arrange for agreement by his supervising physician or therapist to report immediately to the Board any conduct or condition of Respondent that may constitute

a danger to the public in his practice of pharmacy, and any occurrence that constitutes a failure on the part of the Respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled substances, notice of any positive blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. Practice of Pharmacy: Limitations and Conditions. Any practice of Pharmacy by Respondent during the pendency of this Order shall be subject to the following terms and conditions:

(1) Respondent shall not practice as a pharmacist in any capacity unless he is in full compliance with the rehabilitation program as specified and approved under this Order.

(2) Respondent shall not be employed as or work in the capacity of a "managing pharmacist" as defined in sec. Phar 1.02(2), Wis. Adm. Code.

(3) Respondent shall not be employed or work in the practice of pharmacy except under continuing supervision on a daily basis by another registered pharmacist, who is in good standing with, acceptable to and approved in advance by the Board. Respondent may practice pharmacy unsupervised for limited periods of time, totalling not more than an average of twelve (12) hours per week, subject to the following conditions:

(a) Respondent's supervising pharmacist shall submit for consideration with this Order and with the quarterly reports required under paragraph 2.c.(6) of this Order a complete work schedule for all pharmacists employed in the pharmacy and which indicates the supervision pattern for Respondent.

(b) The work schedule and the supervision pattern for Respondent shall be subject to approval by the Board. Except for emergency or other unforeseen circumstances requiring temporary deviation, no change in Respondent's work schedule or supervision pattern may occur without approval of the Board.

(4) Respondent shall not place nor be responsible for the placing of any orders for the purchase of any controlled substances, except as monitored and specifically approved, in writing, by his supervisor and Respondent shall not sign any invoices or receipts for controlled substances.

(5) Respondent shall provide his employer and any prospective employers with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment.

(6) Respondent shall arrange for his supervising pharmacist to provide directly to the Board quarterly written reports evaluating Respondent's work performance, which shall include reports or information required under subparagraph (7) and (8) hereunder. Such reports shall be due on the dates specified in paragraph 1.c. of this Order.

(7) Respondent shall obtain agreement from his supervising pharmacist to monitor Respondent's access to and accountability for handling of controlled substances and other abusable prescription drugs in order to reasonably detect loss, diversion, tampering, or discrepancy relating to controlled substances and other abusable prescription drugs. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and other abusable drugs and the monitoring thereof. Any loss, diversion, tampering, or discrepancy shall be immediately reported to the Board.

(8) In addition to the foregoing subparagraph (7), Respondent shall obtain from his supervising pharmacist agreement to conduct accountability audits of all schedule II controlled substances monthly for the first six months following the date of this order and then every six months for the duration of this Order. The audit shall be conducted by and certified by a licensed pharmacist other than respondent, who shall be approved by the Board. A summary of all audits required under this subparagraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.

(9) Respondent shall arrange for agreement by his supervising pharmacist to immediately report to the Board and to the supervising physician or therapist any conduct or condition of Respondent that may constitute a violation of this Order or a danger to the public.

d. Upon request of the Board, the Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release of counseling, treatment and monitoring records, and employment records.

e. The Respondent shall report to the Board any change of Respondent's employment status, residence address or phone number within five (5) days of any such change.

3. Respondent shall pay costs of this investigation under Wis. Stats. section 440.22 in the amount \$202.21 to the Department of Regulation and Licensing, which costs shall be paid upon adoption and issuance of this Order.

4. Respondent shall not own in whole or in part any interest in a pharmacy during the period of time this Order remains in effect.



5. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of the Respondent's supervising physician or therapist expressly supporting the specific modifications sought. A denial of such a petition for modification shall not be deemed a denial of license under sec. 227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

6. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

7. The Board in its discretion may conduct unannounced inspections and/or audits, and make copies, of pharmacy records and inventory where Respondent is employed as a pharmacist.

8. Violation of any of the terms of this Order or of any law substantially relating to the practice of pharmacy may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

9. This Order shall become effective immediately upon issuance by the Pharmacy Examining Board, except for provision 2.a., which is effective the date of signing by Respondent.

PHARMACY EXAMINING BOARD

By: Thomas M. Lugin RPh  
A Member of the Board

October 9, 1990  
Date

I, Richard H. Kirsch, have read and understood all parts of this Order and attached Stipulation, and pursuant to the attached Stipulation, hereby freely consent to the entry of the foregoing Final Decision and Order Adopting Stipulation by the Wisconsin Pharmacy Examining Board.

Richard H. Kirsch RPh  
Richard H. Kirsch, R.Ph., Respondent

Sept 21, 1990  
Date

RTG:bmg  
DOEATTY-895

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE  
LICENSE OF

RICHARD H. KIRSCH, R.Ph.,  
RESPONDENT

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STIPULATION  
90 PHM 34

The parties in this matter, Richard H. Kirsch, R.Ph., and the Department of Regulation and Licensing, Division of Enforcement, by its attorney, Robert T. Ganch, agree and stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Department of Regulation and Licensing, Division of Enforcement on behalf of the Pharmacy Examining Board of the licensure of Richard H. Kirsch, R.Ph. to practice pharmacy in the State of Wisconsin (case file 90 PHM 34), concerning allegations of chemical abuse and dependency, among other matters. Richard H. Kirsch, R.Ph. consents to the resolution of the issue concerning chemical abuse and dependency by stipulation and without the issuance of a formal disciplinary complaint and hearing.

2. As to the allegations concerning chemical abuse and dependency, the Respondent understands by signing this Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the State has the burden of proving the allegations by preponderance of the evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify in his own behalf, the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision, the right to petition for rehearing and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. The parties hereto understand and agree that notwithstanding this Stipulation and Order concerning chemical abuse and dependency, the Division of Enforcement may continue the investigation into other allegations of violations by Richard H. Kirsch, R.Ph. of statutes and rules governing the practice of pharmacy, and that upon completion of the investigation, the Division of Enforcement may pursue further action, and the Pharmacy Examining Board may take additional or other disciplinary action as deemed appropriate in the circumstances.

4. The Respondent admits the allegations and statements found in the attached Final Decision and Order Adopting Stipulation.

5. The Respondent and the Complainant recommend that the Pharmacy Examining Board adopt this Stipulation and the attached Final Decision and Order Adopting Stipulation in this matter.

6. If the terms of this Stipulation and attached Final Decision and Order Adopting Stipulation are not acceptable to the Board, then none of the parties shall be bound by any of its terms.

7. The attached Findings of Fact, Conclusions of Law, Final Decision and Order Adopting Stipulation may be made and entered in this matter by the Wisconsin Pharmacy Examining Board, without prior notice to any party.

8. All parties agree that counsel for the Department of Regulation and Licensing, Division of Enforcement and the Board Advisor appointed in this matter may appear before the Wisconsin Pharmacy Examining Board to argue in favor of acceptance of this Stipulation and the entry of the attached Findings of Fact, Conclusions of Law, Final Decision and Order Adopting Stipulation. The parties further agree that Complainant's attorney and the Board Advisor may further respond to any questions of the Board during its deliberation on this matter in closed session.

9. This agreement in no way prejudices the Pharmacy Examining Board from any further action against Respondent based on any conduct not stated in the present Findings of Fact which might violate any statutes or rules substantially related to or governing the practice of Pharmacy in the State of Wisconsin.

10. If this Stipulation is adopted by the Wisconsin Pharmacy Examining Board, the attached Order shall become effective as stated in the order.

October 3, 1990  
Date

Robert T. Ganch  
Robert T. Ganch, Attorney  
Department of Regulation and Licensing  
Division of Enforcement

Sept 21, 1990  
Date

Richard H. Kirsch RPh  
Richard H. Kirsch, R.Ph., Respondent

Pharmacy Examining Board, by:

October 9, 1990  
Date

Thomas M. Lynch RPh  
A Member of the Board

RTG:bmg  
DOEATTY-896

**MILWAUKEE PSYCHIATRIC HOSPITAL**

Division of Chemical Dependency  
McBride Center for the Impaired Professional

Roland L. Harrington, M.D.  
Division Director

David G. Benzer, D.O.  
Medical Director  
McBride Center

PERSONAL AND CONFIDENTIAL

August 30, 1990

Pharmacy Examining Board  
P.O. Box 8935  
Madison, Wisconsin 53708-8935

Re: Richard H. Kirsch, RPh

To the Members of the Board:

This is a report regarding the above-stated respondent as requested in the "Final decision and order-adopting stipulation".

Richard H. Kirsch, RPh entered the McBride Center for the Impaired Professional on 5/11/90. His diagnoses are as follows: Alcohol dependency syndrome, opiate dependency syndrome, hypertension, and resolving fatty liver. He participated fully in all activities of the rehabilitation program and was compliant with program rules and suggestions, and was discharged on June 6, 1990.

The primary discharge recommendation was that he enroll in the McBride Recovery House program. However, he was unable to produce the finances for this and an alternative plan was developed which included the following:

1. Weekly Tuesday night McBride support group.
2. Attend five to seven AA/NA meetings per week with regular sponsor contact.
3. Patient to return home to live and return to work, initially not as the managing pharmacist.
4. Weekly random witnessed urine drug screens.
5. One-to one office visits with Dr. Anderson twice per month, initially.
6. Trexan, 50 mg q. day.

*R. Kirsch*

1220 Dewey Avenue  
Wauwatosa, Wisconsin 53213  
414/258-2600, ext. 387

Established in 1884. Non-profit, non-sectarian.  
Fully accredited by the Joint Commission on Accreditation  
of Hospitals. A teaching affiliate of the  
Medical College of Wisconsin.

EXHIBIT A

RK

To the Members of the Board  
August 30, 1990  
Page 2

Thus far, Mr. Kirsch has been compliant with recommendations. He has attended daily 12-Step self-help group meetings. His urine drug screens have been provided as requested. They are free of mood-altering chemicals, and verify compliance with his Trexan therapy.

Because working with another pharmacist proved to be an unreasonable burden for his employer and the patient, we increased his urine drug screen frequency to three times per week and dropped the restriction of a supervised work environment.

I last saw Mr. Kirsch on 8/21/90 and found him to be neither physically nor mentally impaired and in full compliance with our recommendations. If you have any questions regarding our treatment of Mr. Kirsch, please do not hesitate to call.

Sincerely,

*William Anderson MD*

William Anderson, M.D.  
Fellow in Addiction Medicine

*David G. Benzer*

David G. Benzer, D.O.  
Director  
McBride Center

WA/jk

Roeschen's Clinic Pharmacy  
3807 Spring Street  
Racine, WI 53405

August 28, 1990

Robert T. Ganch, Attorney  
Department of Regulation and Licensing \ Division of Enforcement  
1440 E. Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

Dear Sir;

We are writing in regard to the matter of the license of Richard H. Kirsch R.Ph., an employee of Roeschen's Clinic Pharmacy. After much thought and investigation on May 11, 1990 Robert C. Roeschen R.Ph and William J. Fervoy R.Ph. with the aid of two pharmacist interveners from the Wisconsin Impaired Pharmacists Program approached Rick Kirsch. We requested that he enter a program, which is the most accepted program by the Pharmacy Examining Board. [See attached signed agreement] Rick went into the program and all indications are that he is doing very well. He returned to our employment June 11, 1990. Upon recommendation of his physician Dr. Anderson, Rick was not left unsupervised. On July 26 Dr. Anderson sent us a letter stating that it would be acceptable to him that Rick could work unsupervised. At this time he increased his urine screens to three times per week. Rick has been working unsupervised over lunch breaks, one afternoon and every other Saturday morning. We are very confident that Rick will be successful in this program due to his outstanding attitude. The program we chose "Milwaukee Psychiatric Hospital" boasts a cure rate of 87%. We are prepared to satisfy all the requirements of set forth in the order with the exception of Item 3.

We request a variance that Rick be able to work without continuous, direct, on site supervision of another registered pharmacist. As he has been doing for the last two months.

In our professional opinion the above request will pose no danger to the citizens of Wisconsin.

Sincerely,

Robert C. Roeschen R.Ph.  
President

William J. Fervoy R.Ph  
Managing pharmacist  
Supervisor

C: Pharmacy Examining Board

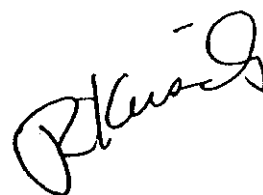


EXHIBIT B

716

Richard H. Kirsch  
1809 - 60th St. 654-4170  
Kenosha, Wi 53140

1793

Sep 27, 1990

79-65/759

PAY TO THE  
ORDER OF

State of Wisconsin Dept of Reg + Lic \$ 80.21  
Eighty and 2/100 DOLLARS



THE  
FIRST  
NATIONAL BANK OF KENOSHA  
EST 1852 KENOSHA, WISCONSIN 53140

MEMO

90 PTH 34

Richard H. Kirsch

+10759006561

1190038426 1793

SAFETY PAPER

ROESCHEN'S CLINIC PHARMACY

3807 SPRING ST  
RACINE, WISCONSIN 53405

9/19/90

Robert T. Bauch, attorney  
Department of Regulation & Licensing / Division of  
Enforcement  
P.O. Box 8935  
Madison, WI. 53708

Dear Sirs,

I am writing to you in regards of the  
license of Richard H. Kirsch R.ph and the  
supervision of him as requested by the  
Board per your phone conversation of 9/19/90.

Our regular pharmacy hours are from  
9 AM To 6 PM. from Monday thru Friday and  
Saturday mornings from 9 AM to 1 PM. We are  
closed on Sundays and Holidays. My  
regular work schedule is daily from  
9 AM till 6 PM with a 1 hr. lunch break, and  
alternate Wednesday afternoon and Saturday  
morning off. These would therefore be  
Risch's supervised hours as per your  
recommendations and our request.



During any absence on my part, for sick leave or vacation I request that the following Pharmacist be approved by the Board as supervising Pharmacist for RICK,

Mr. Jeffrey Clinton Rph #9321

Mr. Robert C. Roeschen Rph #6844

and Mr. Andrew Smith Rph #6499

We have already written and received authorization from Dr. Wm. Anderson, Rick Kirsh's medical counselor, to allow Mr. Clinton & Mr. Smith to act as witnesses for urine screens.

Mr. Kirsh's work schedule is the same as mine except for alternate time off. as per point 4 on page 7, I will monitor orders for controlled substances as stated

and I will be keeping all answers  
and receipts. all class II schedule  
drugs will be ordered by me and  
received by me.

I feel the above mentioned points  
will fulfill the requirements as set  
forth by the Pharmacy Examining Board,  
and your directives.  
Please feel free to contact me if  
you have any further questions.

Respectfully,

William Ferrey Rph  
manager

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is October 11, 1990.

WLD:dms  
886-490

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (c). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson  
Governor

Marlene A. Cummings  
Secretary

October 10, 1990

1400 E. WASHINGTON AVENUE  
P.O. Box 8935  
MADISON, WISCONSIN 53708  
608 266-2112

Richard H. Kirsch, R.Ph.  
1809 60th Street  
Kenosha, WI 53140

Re: Final Decision and Order Adopting Stipulation

Dear Mr. Kirsch:

This is to advise that at its meeting on October 9, 1990, the Pharmacy Examining Board adopted the stipulation reached in this case. Enclosed please find a copy of the final documents executed by the board.

The board asked that I remind you, and your employer by copy of this letter, that there is to be no change under the order from your work schedule or supervision pattern unless approved by the board.

The exception to this requirement of prior board approval is in emergency or other unforeseen circumstances. If such situations occur, the board will expect a prompt report from your employer describing the emergency circumstances necessitating the temporary alteration in your schedule and/or supervision.

In conclusion, I want to wish you all the best in the future, for both yourself and your successful practice of pharmacy.

Very truly yours,

Donald R. Rittel, Attorney  
Office of Board Legal Services

Enclosure

cc: William J. Fervoy, R.Ph.  
Robert T. Ganch, Attorney

BDLS-859

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